



the overpayment caused severe financial hardship as the Office refused to pay her additional compensation owed.

### **FACTUAL HISTORY**

The Office accepted that on November 20, 2004 appellant, then a 40-year-old clerk, sustained multiple trunk contusions and a lumbosacral sprain when struck in the back by a postal container. It accepted an L4-5 disc protrusion related to a December 2, 2005 incident.<sup>1</sup> Appellant underwent an L4-5 laminectomy on February 18, 2008, authorized by the Office. She received compensation for total disability on the periodic rolls from May 11 to June 7, 2008. The Office issued appellant's compensation payments by check.

In a May 21, 2008 letter, the Office advised appellant that she would receive compensation for total wage loss every four weeks. It noted that in order to avoid creating an overpayment of compensation, she should notify the Office immediately when she returned to work. The Office explained that each payment made through its automated system included the period for which payment was made. If appellant worked for any portion of that period, she must return the check to the Office or an overpayment of compensation could result.

On April 1, 2009 appellant accepted a light-duty position as a modified clerk. She returned to work for four hours a day on April 4, 2009. Appellant worked four hours a day on April 4, 6 and 11, 2009 and two hours on April 7, 2009. She was off work on April 9 and 10, 2009. The Office issued appellant a compensation check in the amount of \$2,248.27 on April 11, 2009, covering the period March 15 to April 11, 2009.

Appellant telephoned the Office on April 13, 2009 to report her return to work. In an April 13, 2009 letter, the Office instructed her to return the April 11, 2009 check within 15 days and another check would be issued for the correct amount. In an April 15, 2009 letter, appellant advised that she deposited the compensation check to her bank account. She acknowledged the overpayment and that she was willing to repay the debt.

By notice dated April 27, 2009, the Office advised appellant of its preliminary determination that an overpayment of \$401.37 was created in her case as she received temporary total disability compensation while earning wages four hours a day from April 4 to 11, 2009.<sup>2</sup> It found her at fault as she knew or should have known she was not entitled to wage-loss compensation for total disability while working and earning salary part time. The Office afforded appellant 30 days to submit additional evidence and argument, including an overpayment recovery questionnaire.

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<sup>1</sup> The record indicates that the Office also accepted thoracic/lumbosacral neuritis.

<sup>2</sup> Appellant was entitled to the \$1,606.00 paid for total wage loss from March 15 to April 3, 2009 and \$240.90 for four hours a day of wage loss from April 4 to 11, 2009. She was therefore entitled to a total of \$1,846.90 in compensation from March 15 to April 11, 2009. However, the Office issued compensation checks in the amount of \$2,248.27 for this period, leaving an overpayment of \$401.37.

In a June 15, 2009 letter, appellant asserted that she was unable to repay the \$401.37 overpayment due to financial hardship, as the Office had not paid her compensation owed her from April 16, 2009 onward. She did not submit any financial information.

By decision dated June 29, 2009, the Office finalized the overpayment in the amount of \$321.18 for the period April 4 to 11, 2009.<sup>3</sup> It found appellant at fault in creating the overpayment because she knew or should have known she was not entitled to receive total disability compensation while working part time. The Office further found that, as she was at fault, recovery of the overpayment could not be waived. It directed recovery of the overpayment by deductions from continuing compensation payments. The Office noted that it deducted \$100.00 from the \$259.33 payment made that day covering the period April 12 to 17, 2009. In a June 29, 2009 letter, it noted that it would collect the remainder of the debt by deducting \$159.33 from a pending July 3, 2009 compensation check.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) of the Federal Employees' Compensation Act<sup>4</sup> provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of her duty.<sup>5</sup> Section 8129(a) of the Act provides, in pertinent part, that when "an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled."<sup>6</sup> The Office's procedure manual identifies various situations when overpayments of compensation may occur, including when a claimant receives compensation for total disability after returning to work.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that appellant sustained trunk and lumbar injuries, disabling her for work for intermittent periods through April 4, 2009. Appellant returned to work on April 4, 2009 for four hours a day.

The evidence reflects and appellant does not dispute that she received \$642.36 in compensation for total wage loss from April 4 to 11, 2009. However, she was only entitled to \$321.18 as she was working four hours a day during that period. The Board finds that the Office

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<sup>3</sup> In a June 29, 2009 worksheet, the Office recalculated the amount of the overpayment. It found that, as appellant was entitled to compensation for four hours a day, she was entitled to half the \$642.36 paid for the period April 4, to 11, 2009 or \$321.18. The Office determined that the correct amount of the overpayment was \$321.18 or half the net overpayment set forth in the April 27, 2009 notice.

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Id.* at § 8102(a).

<sup>6</sup> *Id.* at § 8129(a).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.2(a) (May 2004).

correctly determined that appellant received an overpayment of compensation in the amount \$321.18 for the period in question.<sup>8</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Under section 8129 of the Act and the implementing regulations, an overpayment must be recovered unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience.<sup>9</sup> Section 10.433 of the implementing regulations specifically provides that the Office may consider waiving an overpayment if the individual to whom it was made was not at fault in accepting or creating the overpayment.<sup>10</sup> The regulations further provide that each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives from the Office are proper.<sup>11</sup> Under the regulations, a recipient will be found to be at fault with respect to creating an overpayment if the recipient on the issue of fault, section 10.433 of the Office's regulations, provide that an individual will be found at fault if he or she has done any of the following: (1) made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; (2) failed to provide information which he or she knew or should have known to be material; or (3) accepted a payment which he or she knew or should have known was incorrect.<sup>12</sup>

Section 10.433(b) of the Office's regulations provide, in relevant part, that the determination of fault "depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid."<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

The Office found that appellant was at fault in the creation of the overpayment because she accepted a payment that she knew or should have known to be incorrect.

Appellant returned to work on April 4, 2009 and worked part time through April 11, 2009. The record establishes that, on April 11, 2009, the Office issued a compensation check in the amount of \$2,248.27. As noted, this payment included an overpayment of \$321.18 for the period April 4 to 11, 2009, as appellant had earnings from part-time employment and was not entitled to the entire amount. Appellant was advised by the Office's May 21, 2008 letter to return any compensation check encompassing a period of work. Despite this notice, she deposited the April 11, 2009 check in her bank account on or before April 15, 2009. Appellant

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<sup>8</sup> *Alberto Pineiro*, 51 ECAB 310 (2000).

<sup>9</sup> 5 U.S.C. § 8129(b); 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437.

<sup>10</sup> 20 C.F.R. § 10.433(a).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at § 10.433(a)(3).

<sup>13</sup> *Id.* at § 10.433(b).

knew or should have known that she was not entitled to the entire payment issued on April 11, 2009.

On appeal, appellant asserts that she was without fault in creating the overpayment. However, she deposited a compensation check that she knew or should have known was incorrect as she had returned to part-time work and had a salary. Therefore, the Office properly found appellant at fault in creation of the overpayment.<sup>14</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

Whenever an overpayment has been made to an individual who is entitled to further payments, proper adjustment shall be made by decreasing subsequent payments of compensation having due regard to the probable extent of future payments, the rate of compensation, the financial circumstances of the individual and any other relevant factors, so as to minimize any resulting hardship upon such individual.<sup>15</sup>

### **ANALYSIS -- ISSUE 3**

The Office instructed appellant to submit financial data within 30 days of the April 27, 2009 preliminary overpayment determination. Appellant did not submit a response. It is her responsibility to submit information that may be used in determining the repayment rate. Although appellant asserted on appeal that, recovery of the overpayment created a financial hardship, she did not submit financial information as requested.

When an individual fails to provide the requested financial information, the Office should follow minimum collection guides designed to collect the debt promptly and in full.<sup>16</sup> The Office found that appellant could repay the overpayment by deducting \$100.00 from a June 29, 2009 compensation payment and \$159.33 from a July 3, 2009 payment. The two deductions would repay the overpayment in full. There is no evidence to establish that the recovery rate was unreasonable.<sup>17</sup>

### **CONCLUSION**

The Board finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$321.18. The Board further finds that she was at fault in creation of the overpayment. The Board further finds that the Office properly required recovery of the overpayment from continuing compensation payments.

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<sup>14</sup> *Edwin C. Whitlock*, 50 ECAB 384 (1999).

<sup>15</sup> 20 C.F.R. § 10.321(a).

<sup>16</sup> See *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004); Federal (FECA) Procedure Manual, *supra* note 7, Chapter 6.200.4(c)(2) (September 1994).

<sup>17</sup> *Ralph P. Beachum, Sr.*, *supra* note 16.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 29, 2009 is affirmed.

Issued: April 15, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board